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Legal and Judicial Reform in Developing Countries: Reflections on World Bank Experience

*W. Paatii Ofosu-Amaah**

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"Legal reform requires profound knowledge of the economic and social situation in the country involved and can only be useful if it is done by the country itself in response to its own felt needs"

Ibrahim F.I. Shihata, 1990

* Deputy General Counsel, The World Bank. This is an expanded and updated version of a lecture originally delivered on June 12, 2002 at the Council Room of the British Institute of International and Comparative Law in London, England. The findings, interpretations, and conclusions expressed are entirely those of the author, and should not be attributed in any manner to the World Bank, its affiliated organizations, or to members of its Board of Executive Directors or the countries they represent.

I. Introduction

The purpose of this presentation is to provide a historical perspective of the World Bank's involvement in assisting developing Member Countries in legal and judicial reform from the 1960s to the dramatic increase in such programs following the 1991 decision by the World Bank on areas of governance, which were relevant to its mandate. This presentation will include a description and analysis of a selected, but representative, number of Bank-assisted programs and a reflection on the lessons and experiences garnered from them. In addition, some thoughts will be offered on the prospects for this legal and judicial reform in the twenty-first century, taking into account the interest being shown in this subject by legal practitioners, judges, and academics. This presentation is also intended to add to the growing literature on legal and judicial reform across the world in light of the consensus which appears to have been reached on the important role the law plays in the development process.

II. Historical Context

Every society that has gone through significant social, political, economic, or cultural change has found it necessary to reform its laws and institutions to meet the requirements of the new order. This phenomenon is true whether it relates to the adoption of the Twelve Tables in Ancient Rome in 450 B. C., or to the changes following the French Revolution. In the first case, the action was taken on the basis of a demand by the Plebeians, who felt that the courts of the day rendered judgments that were based on laws known to a small group of learned Patricians. The engraving and painting of the Tables ensured transparency in the legal process, and placed limits on the powers of the Patrician magistrates. In the French case, the measures helped to abolish feudal institutions and provided rights to property and contract for all French citizens. This phenomenon of law reform in changing times is a process that has also been followed in almost all of the countries included in the membership of the International Bank for Reconstruction and Development and the International Development Association, these two institutions are hereinafter collectively referred to as the World Bank or the Bank.¹

The role of law as an instrument of social, political, and economic change came into vogue again in the early to mid-1960s, a period that witnessed the attainment of political independence by several countries that had been colonized following the discovery of Asia, Africa, and the Americas by Spain, Portugal, France and Britain. The number of countries achieving political independence was also unprecedented in the world.² Many

1. The International Bank for Reconstruction and Development (IBRD) is an international organization established in 1945 and is owned by 184 countries. Its principal purpose is to promote sustainable development in its Member Countries, primarily by providing loans, guarantees, and related technical assistance for specific projects and for programs of economic reform in its developing Member Countries. The International Development Association (IDA) is also an international organization established in 1960, with the same goals but providing assistance to the less developed countries included in its membership. It extends concessionary financing in the form of grants, development credits and guarantees.
2. *The Scottish Independent Youth Group, New Independent Countries*, at <http://www.Freecose.com> (last visited Oct. 7, 2002).

of these countries had undergone political struggle with the colonial power and there was significant consensus in the United Nations and other international bodies about the need to end colonialism. The pro-independence movement in the United Nations reached its crescendo in the early 1960s with the adoption of several resolutions that characterized the domination and subjugation of people as unacceptable, and called for immediate steps to end colonization.³ By 1965, colonialism had almost ended, but these countries, which had gained their self-government, faced substantial socio-economic problems and all joined the World Bank as soon as possible upon independence. The process of reforming laws to improve the socio-economic situation in these countries to, in turn, improve the lives of their people was of significant interest, not only to the leaders of these countries, but also to lawyers throughout the world. Lawyers sought to understand what contribution law and legal institutions could make towards the dire need for economic development which confronted them. Policy makers and lawyers in the developed countries were interested in the continued influence over the newly independent countries, and therefore, were closely observing what the countries would do. Law professors in the developed countries yearned to learn more about the relationship between law and development as a new field of law, just as professionals from other fields saw opportunities to test their theories and practices in these developing countries. Reflecting the views held in legal circles during this period, Mr. Justice Douglas, a former United States Supreme Court Justice, wrote in an article on the Peace Corps as follows:

These newly developing countries need our help—not only our money and machines and food, but also the great capital of knowledge accumulated by our professions . . . [Refrigerators and radios can be easily exported—but not the democratic system. Ideas of liberty and freedom travel fast and far and are contagious. Yet their adaptation to particular societies requires trained people, disciplined people, and dedicated people. It requires lawyers . . .]We must not miss out on this opportunity for service—from participation in the long creative period ahead of legal development in over half of the world.⁴

These academics and practitioners, armed with the support not only of their governmental entities but of several private foundations having interests in the developing countries, journeyed to the newly independent countries to assist in the change effort. This phenomenon was true not only in the United States but in countries such as Great Britain and France, which maintained close ties to their former colonies. As Professors Trubek and Galanter, two prominent law and development scholars, noted in 1975 when reflecting on the 1960s:

Development was in the air: liberal America was excited by the prospect of harnessing American knowledge and resources to the development task. Moreover, the theme had something for everyone. The comparative lawyers saw in "law and development" a way to break out of the rather sterile comparison of legal rules which had dominated comparative law studies. The social scientists and area specialists saw the theme as a way to relate their traditional disciplinary interests to broader social needs in Third World countries. The social theorists

3. See e.g. United Nations Declaration on the Granting of Independence to Colonial Countries and Peoples, G.A. Res. 1514 (XV), 1960.

4. William Douglas, *Lawyers of the Peace Corps*, 48 A.B.A. J. 909, 909–910 (1962).

of law saw Third World nations engaged in massive use of law to carry out rapid changes of society, thus presenting a fruitful area for theoretical inquiry into the role of law in social change. And the reformers sought a set of ideas that would both guide and justify their projects. Moreover, all saw the theme of "law and development" as one that would promise increased support for academic and action work, for it was hoped that the scholarship would demonstrate to action agencies that legal research and reform would further their goals of fostering Third World development. Action agencies such as the Ford Foundation and AID responded, supporting the law and development scholars and recruiting them to man reform projects in developing nations.⁵

Due to the reasons articulated above, legal practitioners and scholars from the United States, France, and the United Kingdom went to many of the newly-independent countries during the 1960s, to assist these countries in the early stages of their reform programs. This assistance supported a legal reform project in Costa Rica, a legal education project in Brazil, and a law program to study law and development in Chile. American lawyers went to India, Korea, and even Vietnam. Lawyers from the United Kingdom and France, who practice common law and civil law traditions, respectively, paraded to their former colonies in Africa in particular to assist in the reform programs necessitated after independence. This was mainly because the African continent, which had the largest number of countries becoming independent during the 1950s and 1960s (from 1956–1968, thirty-four countries gained independent status), was virgin territory for this work. Legal practitioners and professors worked in programs in Ghana, Ethiopia, Zambia, Kenya, Cote d'Ivoire, Nigeria, Senegal, and Sudan. The same phenomenon played out after the independence of Algeria, Tunisia, and Morocco.

It should be noted that these legal practitioners and academics were not uninvited visitors to these countries. They were invited, sometimes with the specific knowledge of the leaders of the countries who were interested in using law to promote rapid and positive change in the lives of their peoples. This was alluded to, for instance, by the then President of the Republic of Ghana, Kwame Nkrumah, who delivered a speech at the fairly newly established Ghana Law School in 1962, as follows:

In reforming our own laws, we have sought technical assistance from Commonwealth countries, the Irish Republic and the United States of America. In our new legislation, we have adopted a number of legal principles advocated by such bodies as the New York State Law Revision Committee. Such outside help is of value provided, of course, that the basic principle—that all our laws must be designed to meet the needs and aspirations of our people—is never forgotten.⁶

At the same time, scholarships were granted to many law students from these countries to do post-graduate studies in the developed countries. Many of these law students had an interest in how they could use their new-found opportunities to assist their countries in the development process. As a result, many such students joined the "law and development" movement (the label of the movement to which these scholars belonged) as well as writing theses and even books on the subject, drawing inspiration from the

5. Trubek & Galanter, *Scholars in Self-Estrangement: Some reflections on the Crisis in Law and Development Studies in the United States*, 1974 WIS. L. REV. 1062, 1067–68 (1974).

6. Pierre COT, *The Future of African Law*, 1962–1963 REV. OF CONTEMP. L. 9, 12 (1962–1963).

works of the notable scholars of the movement.⁷ Significant attention was also paid to the law reform exercises in the developed countries to glean appropriate lessons of experience. While the "law and development" movement went into what had been characterized by Professors Trubek and Galanter as "self-estrangement" in the mid-1970s, many of its works influenced the legal reform activities in the newly-independent developing countries. Indeed, the basic elements of the legal theories developed by the law and development movement continue to be relevant to the legal and judicial reform exercises of the recent past and also offer insights into future programs. In particular, the scholarship on the historical context of rapid economic development and the role played by the legal and judicial system continues to be of special interest.⁸

In connection with the role to be played by law in the development process, the analysis of the work of one scholar, the notable nineteenth century German sociologist, Max Weber, has continued to stand out. Max Weber, who attempted to analyze systematically the role of the modern legal system in the emergence of Western civilization and concluded that the legal system played an important role in the economic advancement made in Europe, became the analytical and philosophical "godfather" for many of the legal reform exercises of the 1960s. Weber's main thesis was summarized as follows by Professor Trubek:

[Weber's] research led him to three basic conclusions. First, that the more "rational" a legal system was, the more conducive it would be to the emergence of a capitalist, industrial system. Second, that European legal systems were more rational than those which had emerged in other civilizations. Finally, that this legal rationalism existed in large measure in Europe before the full development of the industrial, economic system. From these observations, Weber concluded that Europe's legal system was one of the factors responsible for the rise of capitalism.⁹

Weber also discerned that certain elements in law made it essential to the functioning of a market system. These included "universal rules uniformly applied, which generates predictability and allows planning; a regime of contract law that secures future expectations, and property law to protect the fruits of labor."¹⁰ Weber also stressed two aspects of law which were important to capitalist development: its relative degree of calculability and its capacity to develop substantive provisions, principally those relating to freedom of contract, which is necessary for the market system to function.¹¹

7. See for example, T. Ocran, *Law in Aid of Development: Issues in Legal Theory, Institution Building and Economic Development in Africa* (Ghana Publishing Corp., 1978). He notes in the acknowledgements that "this book has arisen from knowledge and perspectives gained as a graduate student of the law and the social sciences at the University of Wisconsin (Madison Campus), as a graduate student and research fellow in law at the University of California, Los Angeles (UCLA) and as lecturer in jurisprudence and legal institutions at the University of Zambia. But the immediate inspiration for its writing came from the introductory chapter to my Ph.D thesis on agricultural marketing boards in Zambia."

8. See, e.g. Bilder & Tamanaha, *Law and Crisis in the Third World*, 89 AM. J. INT' L L. 470 (1995).

9. See Passim Trubek, *Max Weber on Law and the Rise of Capitalism*, 3 WIS. L. REV. 720 (1972).

10. *Id.*

11. *Id.* at 740.

Whether drawing specific inspiration or not referring at all to Weber, many of the developing countries that attained independence from the late 1950s to the early 1970s, proceeded to undertake major legal reforms to promote the economic aspirations of their people immediately upon becoming independent. The principal motivating factor for these programs was the need for change, because the legal system operating, at least in the economic sphere, was not supportive of the new paradigm. Most of the laws, it was felt, had been designed to promote the goals of the colonial power, mainly the commercial interests of business enterprises from these countries. Thus, the notion belonging to the "law and development" movement, that law could be used as an instrument for social and economic change, would appear to have been embraced by the newly independent countries.

This view of the role of law in economic development has become more commonplace and was shared by the late Dr. Ibrahim Shihata, the departed and venerable Senior Vice President and General Counsel of the World Bank, in whose memory this presentation has been prepared. In his view,

Law, as a matter of fact, is intertwined with the many political, cultural, economic and financial forces which have an impact upon development . . . And it is a principal instrument which governments use to interact with the economy, to translate policies into rules which are meant to be followed in practice.¹²

More recently, this view has also been articulated by the President of the World Bank, Mr. James D. Wolfensohn, who has also championed the role of law and the legal and judicial system as an important factor in economic development. One of the key pillars of the Comprehensive Development Framework reflects this view:

Without the protection of human and property rights, and a comprehensive framework of laws, no equitable development is possible. A government must ensure that it has an effective system of property, contract, labor, bankruptcy, commercial codes, personal rights laws and other elements of a comprehensive legal system that is effectively, impartially and clearly administered by a well-functioning, impartial and honest judicial and legal system.¹³

This instrumentalist view of law especially in the development process which was evident in the 1960s has come full circle, and the next parts of this presentation will describe and analyze the World Bank's involvement in legal and judicial reform to draw lessons of experience. The progressive role of the Bank in this important area of the development process will be emphasized as well a prognosis for more and sustained programs to be expected in the future.

12. Ibrahim F.I. Shihata, *The World Bank and Private Sector Development-A Legal Perspective*, *The World Bank in a Changing World* (F. Tschöfen & A. Parra, Martinus Nijhoff, eds. ch. 6, 230-31 (1991)).

13. Memorandum from James D. Wolfensohn, to the Board, Management, and Staff of the World Bank, *A Proposal for a Comprehensive Development Framework (A Discussion Draft)*, The World Bank, (Jan. 21, 1999), available at <http://www.worldbank.org>.

A. BANK'S INVOLVEMENT IN LEGAL AND JUDICIAL REFORM
FROM THE EARLY 1960S THROUGH THE 1970S

The "first wave" of legal and judicial reform in developing countries took place in the 1960s and early 1970s, when the Bank did not exhibit a keen interest in this area of work, nor did it provide the critically needed financial assistance required for this work. There is no record, nor is there significant evidence of any requests, from the then new Member Countries to the Bank for assistance in this area, despite the fact that legal reform was an important facet of the development process in many countries. This phenomenon is also striking because these countries sought help on economic development matters and legal issues, from the United Nations as well as its Economic Commissions. The United Nations also assisted the countries in devising appropriate frameworks for mining sector activities to ensure that they received their due share of the proceeds of these activities. These countries also received assistance from other international organizations which played major roles in the development of substantive international laws, such as: the Council of Europe, The Hague Conference on Private International Law, and the International Institute for the Unification of Private Law (UNIDROIT), whose prepared texts were very often adopted wholesale by these countries. The involvement of such institutions should be contrasted to that of the Bank, which was very limited during this period. The Bank's minimal involvement is illustrated quite vividly in the response given by the Bank's Information Office in 1962 to a question on the role of lawyers in operations undertaken by the Bank. The response was as follows:

We have never had a lawyer included on a mission because of his legal knowledge. You have probably noticed from the reports [of the various missions] that the effort of a mission is generally directed towards broad economic planning and programming and that consequently its depth is extremely limited in the more specialized and highly technical areas such as the development of the legal system of the country or the legal problems incident to economic development. This is not to say that men [sic] with legal backgrounds are never mission members, but rather that, if they have such backgrounds, it is only incidental to their other abilities.¹⁴

This was the position despite the fact that in the legal literature of the time, especially with regard to developments in African countries, two of the best known English law professors, Professors A.N. Allott and Gower, were propagating the important role that law and lawyers can play in the development process. They were both of the view that legal development should be included in programs designed to assist in economic growth in the developing countries, particularly in Africa. Professor Gower had worked with the Ghanaian authorities in a largely successful and innovative company law reform in the early 1960s.¹⁵ The "law and development" movement was also in high gear during that period and no notice appeared to have been taken of its activities by the Bank.

14. A. Weiner, *Law and Economic Development*, 40 U. DEN. L. J. 510, 512 (1963) (Letter from Doris R. Eliaison, Office of Information, IBRD to Alexander L. Weiner, Jr., dated March 15, 1962).

15. Professor Gower was the Commissioner of the Commission of Enquiry into the Working and Administration of the Company Law of Ghana which produced a report in 1961 [hereinafter Gower].

The only notable Bank contribution in this area was the assistance provided in the establishment of appropriate frameworks to facilitate the so-called "enclave projects" in the infrastructure sector. An "enclave project" involved a project activity in a country that is outside the general economic activity in the country but which generates significant foreign exchange and is self liquidating, since it generates all the resources needed for debt service obligations and resources for development-related activities. In some cases this work involved amendments or reform of other economic-related laws, such as those in the banking, tax, companies, and other corporate areas. More often than not however, ways were found to create exceptions or exemptions to existing law, rather than to undertake comprehensive reform.

While the newly independent countries made significant economic progress in the 1960s, by the beginning of the 1970s, they saw their gains in improving the lot of their peoples begin to erode, particularly as a result of the balance of payment deficits in the period, which affected significantly oil-importing developing countries.¹⁶ This led to the call for a new international economic order,¹⁷ the intent of which was to redefine the relationship between developed and developing countries. With these United Nations Resolutions in hand, many developing countries undertook further policy and legal reforms designed to restrict foreign direct investment in sectors which they considered should be barred.¹⁸ Many countries adopted new investment laws with the assistance of United Nations organizations, but also expropriated the assets of foreign companies, particularly in the mineral and natural resource sectors. This law reform process was largely home-grown in many countries and, therefore, the Bank and other international organizations were out of the picture.

B. THE LEGAL BASIS FOR INCREASED BANK'S INVOLVEMENT IN LEGAL REFORM AFTER THE 1960S AND 1970S

It took the Bank almost twenty years to begin to support significant activities in legal reform, even though most of its developing Member Countries had been engaged in it for several years. Most of the Bank's assistance in the initial stages was associated with the structural adjustment instrument introduced in the Bank in the early 1980s. Structural adjustment programs were designed to assist governments in supporting clearly defined sets of reforms aimed at economic growth and development. Under these programs, initial reforms which are critical to the implementation of particular policy objectives involving amendments to the legal frameworks, are agreed upon prior to the first disbursement of loan funds. Subsequent loan tranches are released only when conditions essential to the achievement of the program objectives have been fulfilled.¹⁹ For instance, a country cannot promote the local export industry without appropriate laws and regulations giving the necessary authority for the reduction and simplification of its tariffs

16. See, e.g., *IDA in Retrospect: The First Two Decades of the International Development Association*, (Oxford University Press, 1982).

17. G.A. Res. 3201 (S-VI), (1974); G.A. Res. 3362 (S-VIII), (1975).

18. See, e.g., Ghana Business Promotion Act, 1970.

19. For a description of this lending instrument, see W.P. Ofosu-Amaah, *The World Bank—Legal Aspects of its Recent Lending Activities*, in *THE TRANSNATIONAL LAW OF INTERNATIONAL TRANSACTIONS*, (N. Horn and C. Schmittoff eds. Vol. 2 (1983)).

structure. The same is needed for the deregulation of the foreign exchange markets to improve efficiency, and to significantly lower incentives for fraud and corruption. An increase in the demand of labor to spur export activity cannot be achieved without a review and appropriate amendments to the labor code.

However, the major interest shift in the role of law and the legal system came into increased focus when the Bank embarked on providing significant support for private sector development, which was seen then, and is still considered, as the engine of growth for developing countries. The justification for the assistance programs by the Bank on legal and judicial reform for private sector development, was explained in a publication by the then General Counsel, as follows:

The Bank's deep involvement in PSD (Private Sector Development) makes it important, in fact, inevitable, for it to focus more critically on legal and institutional framework issues. The Bank's approach in this area, as in other aspects of its work, must be tailored to the different social and economic circumstances in its borrowing countries. In particular, the Bank has to be sensitive to the historic, social and, in some cases, religious background to the legal system and the institutions involved in legal administration and enforcement. Societal attitudes to law, the gap between modern and traditional sectors, the tension between the laws governing such sectors, the degree to which corruption is tolerated or the manner in which law is actually used and enforced (supportive, repressive, neutral) are all factors which should influence the Bank's understanding of the situation in each country. Admittedly, a number of factors will limit the role the Bank can realistically play in assisting interested countries to develop their legal and institutional framework. However, how committed to structural adjustment or private sector development, governments ultimately decide what is politically feasible in their societies. Amending laws and regulations in the broad areas mentioned, or changing administrative and judicial processes and associated institutions is inherent in the sovereign powers of states and raises difficult sociopolitical issues.

The Bank supported significant legal reform based on the diagnosis of the issues affecting private sector development in a wide array of legal subjects related to the private sector. These included: reform of legislation in banking, insurance, securities, commercial corporations, trade, and land law. Examples of cases where the Bank supported programs either through structural adjustment loans or through technical assistance projects (with some programs supported by grants) abound, and support was provided for projects in countries across the developing world. In all such cases, the proceeds of the loan or credit are used to finance project-related activities such as: consultant services, training programs, as well as required equipment. A few examples may be illustrative of this assistance.

In 1990, the Bank supported Venezuela in connection with the development of its new regulatory framework for banking through an adjustment loan. The adjustment loan was followed by a technical assistance loan designed to assist in the reformation of the legal and regulatory framework for the functioning of capital markets and financial institutions. Prior to these projects, the Bank had made a Trade Policy Loan to Venezuela, which assisted in a comprehensive review of the legal provisions of GATT and their legal and economic implications in connection with accession to GATT.²⁰

20. Financial Sector Adjustment Loan, (Loan No. 3224 VE.), Oct. 15, 1990, available at <http://www.worldbank.org>.

Uganda received a credit in 1988 to assist in defining a program of divestiture and liquidation of public enterprises, including development of an appropriate legal and regulatory framework for sound management of its public enterprise sector. As in the case of Venezuela, the proceeds of the credit were used to finance the foreign consultants and the training program.²¹

Sri Lanka received a series of credits in the early 1990s, to assist in the promulgation of appropriate debt recovery laws, appropriate legislation for the restructuring of its telecommunications sector, and also its mining and company law.²²

Mozambique was supported in the strengthening of its banking law. The strengthening included training of staff in its Central Bank through the Economic and Financial Management Technical Assistance Project. A follow-up project in 1990 assisted the financing of legal advisers to help prepare the legal framework for privatization.²³

C. BANK'S INVOLVEMENT IN LEGAL AND JUDICIAL REFORM AFTER 1991

From the late 1980's through the 1990s, legal and judicial reform started to receive more attention. From 1991 onward, support for such reforms became an even more important aspect of the Bank's assistance programs, following the long and arduous discussion on the parameters and extent of the Bank's work on "governance," a term that has only recently become part of the development lexicon. This discussion in the Bank was held at the level of its Executive Directors, and took place against the backdrop of the concern about the evolution of development activities in Africa. Indeed, the word "governance" first appeared most explicitly in a major strategic study on Africa, which noted that without "governance," Africa's development effort would not achieve its potential.²⁴ Concern was expressed in some quarters, however, that issues related to "governance," while of interest to the Bank, it entailed aspects that may not be within the mandate of the Bank. The broad discussions of this issue and the increased significance attached to the concept of the promotion of "good governance" around the world accounted for the Bank's Executive Directors interest on the issue.

One should recall during this period that significant and important political and economic changes had taken place in the world, particularly in Eastern and Central Europe, with the collapse of the Soviet Union and the birth of fifteen new States. Also, in response to this dramatic political change, several already developed and developing countries in Europe as well as the United States and Japan had decided to establish a development finance institution in Europe with objectives similar to those of the World Bank, to

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21. Public Enterprises Project (Credit No. 1962 UG), Dec. 2, 1988, *available at* <http://worldbank.org>.
 22. Third Small and Medium Industries Project (Credit No. 1860 CE) Feb. 10, 1988, *available at* <http://www.worldbank.org>; Third Industrial Development Project (Credit No. 1948 CE) Sept. 19, 1988, *available at* <http://www.worldbank.org>; Public Manufacturing Enterprises Adjustment Credit (Credit No. 2185CE) Nov. 30, 1990, *available at* <http://www.worldbank.org>.
 23. Economic and Financial Management Technical Assistance Project (Credit No. 2066 MOZ) Dec. 1, 1989, *available at* <http://www.worldbank.org>; Industrial Enterprise Restructuring Project (Credit No. 2081 MOZ), Feb. 7, 1990, *available at* <http://www.worldbank.org>.
 24. *See Sub-Saharan Africa—From Crisis to Sustainable Growth, A Long-Term Perspective Study*, The World Bank (1989).
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help the countries in the Region during their transition to open and market-oriented economies. In the course of the negotiations leading to the signing of the Agreement establishing the European Bank for Reconstruction and Development (EBRD), which involved prospective shareholders from Member Countries of the Bank, the issue of "governance" was a subject of significant discussion. In the end, while not specifically mentioned in the EBRD Articles of Agreement, the Articles did make reference to the new Bank's objective to support "the intent of Central and Eastern European countries to further the practical implementation of multiparty democracy, strengthening democratic institutions, the rule of law and respect for human rights and their willingness to implement reform in order to evolve towards market-oriented economies."²⁵ The elements, included in the Articles, were taken into account in the discussions in the World Bank as they were connected to some of the elements understood as being part of the notion of "governance."

In the midst of these developments, a request was made by the Executive Directors of the Bank to the then General Counsel, Mr. Shihata, for an analysis of the issues of "governance" in borrowing Members of the Bank, and the extent of their relevance under the respective Articles of Agreement of the International Bank of Reconstruction and Development (IBRD) and the International Development Association (IDA). In a seminal legal opinion prepared for the Executive Directors in 1990, the then-General Counsel explained the nature of the Bank as an international organization with Articles of Agreement (its Constitution) that set forth its authorized purposes and mandates and explained further the six, separate but inter-related, requirements that guide its activities and decisions. These included the fact that:

- (1) The proceeds of each loan made by the Bank should be used with due attention to considerations of economy and efficiency and, in making its decisions, the Bank is prohibited from taking into account political or other non-economic considerations;
- (2) The Bank should not interfere in the political affairs of its Members;
- (3) The Bank should not be influenced by the political character of its Members;
- (4) Only economic considerations are to be taken into account in its decisions, and these have to be weighed impartially;
- (5) The President and staff owe their loyalty entirely to the Bank and to no other entity; and lastly,
- (6) Members of the Bank should respect the international character of this duty.

After evaluating the meaning of the terms "economy" and "politics," and the effect of these requirements, he opined that "good governance" is the manner in which power is exercised in the management of the resources of a country's economic and social resources for fostering development. To that end, Shihata stated:

it is clear that not all issues related to "governance" of its borrowing members fall within the Bank's mandate . . . such governance becomes an issue of concern to the Bank only in its

25. Art. I, Agreement Establishing the European Bank for Reconstruction and Development, May 29, 1990.

strict sense of the good order required for a positive investment climate and for the efficient use of resources.²⁶

On the basis of this analysis, the General Counsel gave examples of civil service reform, activities in connection with accountability for public funds, budget discipline, and legal reform (including judicial reform), as illustrative of areas related to good governance which may be appropriately addressed by the Bank. He also noted that while legal and judicial reform was not specifically mentioned in the Articles, it could not be ignored in the process of economic development, and that legal and judicial reform along with civil service reform constitute the basic elements of "good order" in the management of a country's resources—its governance. In giving his opinion on this important issue, Mr. Shihata used the "teleological" approach to interpretation, which is the method generally favored in the interpretation of the constituent instruments of international organizations. This method of interpretation has allowed the Bank to adapt to changing circumstances in the world since it opened for business in 1946.

After a lengthy debate, the Executive Directors adopted the General Counsel's approach, and this decision opened the door for a dramatic shift in the Bank's assistance programs directed at legal and judicial reform. Following this momentous decision, the Bank's Legal Vice President proceeded to put together a team on this subject to support countries requesting assistance on the basis of a cardinal principle set forth in the General Counsel's Governance Memorandum:

Legal reform [including judicial reform] requires profound knowledge of the economic and social situation in the country involved and can only be useful if it is done by the country itself in response to its own felt needs. The Bank may favorably respond to a country's request for assistance in this field, if it finds it relevant to the country's economic development and to the success of its lending strategy for the country.²⁷

This principle is entirely consistent with the lessons of experience drawn from the legal reform programs from the 1960s, and has been the main guiding principle for the Bank's assistance programs in this area of work since 1991. This guiding principle, read by itself, does not necessarily raise issues which may be encountered in the Bank's provision of assistance in legal and judicial reform to its borrowing Member Countries. However, taking into account that such activities frequently touch on issues which involve partisan politics in a particular country and sometimes delve into political, socio-cultural, and other issues which are delicate, the General Counsel indicated that work in this area should be handled "with the greatest caution, lest [the Bank] finds itself involved in areas prohibited under its Articles of Agreement."²⁸

Taking up the challenge to deepen the involvement of the Bank in this area of work, the staff of the Africa Division of the Legal Vice Presidency (of which I was then Chief Counsel) prepared jointly a strategy document²⁹ designed to assist in focusing the Bank's

26. Ibrahim F.I. Shihata, *Issues of "Governance" in Borrowing Members—The Extent of Their Relevance Under the Bank's Articles of Agreements*, in *WORLD BANK: LEGAL PAPERS*, Martinus Nijhoff eds. ch. 10, 280, 2000.

27. *Id.* at 276.

28. *Id.* at 279.

29. Memorandum from LEGAF, (Dec. 29, 1992).

work on legal and judicial reform in the African context. A primary focus was to assist countries to develop or reform systems so that disputes, which inevitably arise in society, may be adjudicated with efficiency, effectiveness, evenhandedness, and in an expeditious manner. A number of questions were considered, taking into account the socio-political conditions in Africa at the time, the principal ones being:

Would the Bank assist in the improvement of a judicial system in a country without regard for the substantive laws applied by such a system? If the substantive law or significant elements of it run counter to what the Bank considers to be desirable policies, should the Bank work to actively and directly strengthen the judicial system related to that aspect of the law? How about cases where the substantive law violates basic standards of human rights?³⁰

The paper also considered whether the Bank should accede to requests for assistance by military dictatorships, which by their nature do not abide by the rule of law. Criteria agreed upon included the following (noting that "legal reform," as it was used at that time, was understood to include "judicial reform"):

The Bank should only require, or assist with, legal reform if there is a demonstrable, relevant, and material link between the reforms in question and economic development in the country. The Bank should assess the possible impact of the legal reform as well as its sustainability and weigh this against the amount of resources that will be necessary to bring about reform.

The Bank should not support activities with direct political connotations and which involve competition between rival interest groups or individuals seeking power and leadership of the country concerned or seeking to control governmental activities, and, in particular, the Bank should not be involved in issues related to the nature of government in any member country.

The Bank should not identify the nature of the non-economic impact of the proposed legal reform; the Bank should act with circumspection where the proposed legal reform has significant impact on political issues or other sensitive areas which fall outside the Bank's mandate.

The Bank should not assist in the strengthening of legal frameworks or legislative reform where such assistance would breach, or induce the country to breach, its international obligations.³¹

These criteria have been considered by the Africa Division of the Legal Vice Presidency in determining Bank involvement in this area of work, and similar criteria have been utilized for work in other areas of the world. The Bank has carefully steered away from political issues associated with these Bank assisted programs. Where politics rears its head, the Bank's involvement has been to encourage borrowers to ensure a participatory role by all relevant stakeholders to obtain the commitment to reform. Also, the Bank has specifically steered away from reform in the criminal law and justice area, since it tends to have significant and direct socio-cultural and political considerations. However, this is not to say that this precluded area has not benefited indirectly from Bank-supported programs. Training programs for the judiciary financed by the Bank often involve all judges in the country concerned, and improvements to the registries and case management systems also indirectly benefit the administration of criminal justice in the country concerned.

30. *Id.*

31. *Id.*

D. EXAMPLES OF BANK ASSISTED PROGRAMS IN LEGAL AND JUDICIAL REFORM SINCE 1991

Since 1991, when the Executive Directors made their pivotal decision on aspects of governance consistent with the Bank's mandate, the Bank has provided significant assistance in legal and judicial reform activities in its borrowing Member Countries. This effort has been deepened considerably, since the early 1990s, as clarion calls have been heard all around the world for the principles of the "rule of law" to be a key ingredient to be incorporated in governmental systems—especially in the developing countries. Some aid agencies have even made the adoption of the "rule of law" elements as a precondition for assistance to particular countries. Numerous articles have been written on this topic since the 1990s, even if there is a lack of complete agreement on what the term means or entails.

However, in its broadest sense, the notion of the "rule of law" requires the existence of a system, which allows citizens of a country to plan their affairs with the advance knowledge of the consequences of their actions, and to be protected from at least some types of official arbitrariness. These elements are particularly important in the economic-related areas. As will also be seen, the Bank-assisted programs serve various values that are included in the useful distillation of the principle of the "rule of law" by Professor Summers of Cornell University Law School. These values include:

- Legitimate government (legislative and judicial as well as executive);
- Domestic peace and order;
- Certainty and predictability of governmental action and of the legal effects of private law—making;
- Respect for the dignity of the individual (e.g. citizens being responsible only for acts which they knew or reasonably could have known were somehow contrary to law at time of acting; citizen autonomy and choice duly effectuated);
- Freedom from arbitrariness of official action;
- Ultimate imposition of remedies and sanctions for rule departures only by impartial and independent courts and similar tribunals after appropriate notice and opportunity to be heard;
- Actual equality of legal treatment at the hands of the government;
- The appearance of actual equality of legal treatment.³²

However, the Bank's mandate does not allow it to deal with some of the aspects of the rule of law outlined above, such as domestic peace and order and political aspects of human rights. But, the emphasis on predictability and limitation on arbitrariness of governmental action through the promotion of transparency, accountability, and efficiency and effectiveness of systems has been an important feature in almost all Bank-assisted programs. The following are selected examples of Bank-assisted programs covering a diverse group of countries.

Since 1991, the Bank has supported more than 350 projects related to legal and judicial reform in its borrowing countries. These projects range from those with components designed to facilitate private sector development or designed to assist in making appropriate amendments to new legislation in a particular sector, to what are referred

32. Summers, *Ratio Juris*, Vol. 6 No. 2, 127, 131 (July 1993).

to as "freestanding" meaning that the scope of the project covers system-wide reforms or is exclusively devoted to the law and justice sector. There have been at least eighteen free-standing projects so far in four of the regions of the world, with the distinct prospect that many more projects will take this form as interest in this field of work continues to grow. In view of the significant number of these projects, only a few of the more interesting projects will be described with a focus on projects which have been completed so as to bring out lessons of experience which may inform future programs.

1. Africa

Throughout the 1990s, a number of legal and judicial reform activities were supported in the Africa region with objectives ranging from revision of outdated laws (particularly those in the business and economic sectors), to financing of activities to rehabilitate, upgrade, and modernize the courts, which were to handle primarily commercial disputes that arose from time to time. In this connection, Bank financing was provided for projects in several countries, including Benin, Burundi, Burkina Faso, Cameroon, Cape Verde, Chad, Cote d'Ivoire, Ghana, Guinea, Kenya, Mauritania, Rwanda, and Tanzania. In Francophone African countries, the projects were within the context of "economic management projects," which also included aspects relating to the strengthening of civil and public service management and public procurement, strengthening private sector development, and budget management. These projects were also tied to the harmonization of the "droit des affaires"—the business-related laws—which were being developed at the time under the auspices of the Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA).³³ An example of this type of project may illustrate the nature and objectives of such projects.

The Burkina Faso, Public Institutional Development Project³⁴ was designed to improve economic management in the country with components relating to information and data management, budget management, public procurement reform, civil service reform, legal and judicial reform, and public information on economic policy. With respect to legal and judicial reform, the project included components supporting technical assistance for the revision of the commercial code, as well as the mining code, and land-tenure law. It also assisted in the training of lawyers and magistrates in the country, supported the establishment of the institutional framework required for arbitration, and provided technology to ensure the production and safe storage of court decisions, the upgrading of the Supreme Courts library, and the rehabilitation and modernization of facilities for preparing the official gazette. The Bank's resources were used to finance aspects of this program.

A review of this project several years after completion revealed a number of lessons. While the promulgation of laws was successfully completed in part because they were tied to the OHADA process and, even though a significant training program on the new laws offered to several lawyers and judges was especially effective the judicial system continued to exhibit major constraints, especially to private sector development.

33. See W.P. Ofosu-Amaah, *Reforming Business-Related Laws to Promote Private Sector Development*, The World Bank, 43–47 (2000).

34. Public Institutional Development Project (Credit No. 2378 BUR), 1992, available at <http://www.worldbank.org>.

There appeared to be inadequate access to, and delivery of, quality legal and judicial services; poor accountability and transparency; and inadequate resource allocation to ensure sustainability. The major factors indicated for the unsatisfactory performance were the lack of sufficient government commitment to these reforms and the severe insufficiency of financing of recurrent expenditures by the government. As important, it was noted for all the components that institutional development is uncertain, it takes significant time and effort and requires sustained and skilled engagement if it is to be successful.

Meanwhile, in the Anglophone part of Africa, similar projects were supported in several countries, including, Zambia, Kenya, and Ghana, with the objective of upgrading financial and legal management in the countries. The flagship project in this respect was the Tanzania-Financial and Legal Management Upgrading Project (FILMUP),³⁵ which had various objectives, including the upgrading of the accounting and auditing professions in the country. This project was prepared as a result of the dire state of the legal sector in Tanzania in the early 1990s. The legal sector, as is the case in most developing countries, had been grossly under-funded all through its history. Approved budgetary expenditures for the sector totaled less than 1.5 percent of the aggregate government expenditure each year, an indication of the low priority paid to the sector. In addition, almost all the institutions in the sector lacked the necessary infrastructure, desks, stationery, library systems and justice system, particularly in the rural areas, suffered from poor access, delays and corruption. Finally, most of the laws on the books were outdated and needed updating.

The legal component therefore included training of staff in the Attorney-General's office, provision of office and computer equipment to that office, the Judiciary, the Registrar of Companies, and the Law Reform Commission, and revisions and publication of the laws of Tanzania. While hardware was provided and the laws of Tanzania have now been revised and published, the most significant aspect of this project was the methodology that was utilized to assist the government in developing its own legal sector program, which outlined for the first time in its history, actions to be taken to improve the legal and judicial system in the short, medium, and long term. This study, the preparation of which was led by distinguished Tanzanian lawyers, economists, civil servants and representatives of all relevant stakeholders, including governmental representatives, as well as civil society, has served as an example for projects elsewhere in Africa, notably, Ghana, Kenya, and Nigeria. This requirement of bringing together all stakeholders in the legal and judicial system led to the building of commitment to the program, an important prerequisite for successful legal reform programs.

A review of the Project on completion indicates what is now a shared view in the international development community, that ownership and commitment by the borrower country concerned is key to program effectiveness. In the case of FILMUP, it was a Tanzanian initiative from the outset, which was driven by so-called "national champions." These national champions were composed of a new generation of professionals, including accountants, auditors, and lawyers who had both strong personal and organizational incentive to make change happen. In addition, this project led the way on how donor support should be integrated and coordinated in program preparation. The external

35. Financial and Legal Management Upgrading Project (Credit No. 24130 TA), 1992, *available at* <http://www.worldbank.org>.

financiers, consisting of the Bank, Denmark, Norway, Sweden, and the United Kingdom allowed the Tanzanians to take the lead, and the donors coordinated their assistance through periodic meetings among themselves and with relevant representatives of the borrower.

2. *Eastern and Central Europe*

While African countries had functioning legal systems inherited from its colonial powers, the situation in Eastern and Central Europe was quite different, and Bank assistance to these countries had a different focus. In this part of the world, the main emphasis was on how the countries could be assisted in their quest to move their so-called "command economies" to market-oriented economies, as was so clearly articulated in the preamble of the Agreement Establishing the European Bank for Reconstruction and Development. The projects supported by the Bank, as well as by other financiers, focused in the first instance, on assistance for the promulgation of new laws or amendment of existing laws in the economic and corporate areas.

The main areas dealt with included legal reform in bankruptcy, corporate and banking law, securities and privatization laws, and laws relating to specific sectors and property rights. Contrary to the lending programs in Africa, which took the form of investment operations, a significant number of Bank lending in the Eastern and Central European Republics for legal and judicial reform were through adjustment lending. In such cases, the reform of laws is supported indirectly through the conditionality in the adjustment operation which primarily may be concerned with measures required for the structural economic-related reforms of the borrower's economy. The Bank is not necessarily involved in the discussions leading to the implementation of the reform program; it does not provide its financing specifically for the required legal reform, but rather provides balance of payment support. For instance, two structural adjustment credits made to Georgia in 1996 and 1997³⁶ respectively, had the objective of supporting the government's program to consolidate stabilization and foster strong and sustained growth recovery. As a basis for the provision of this support, the borrower provided the Bank with a letter of development policy, which included the borrower's intention to enact a law on entrepreneurs, reform of accounting standards and to establish independent share registrars, enact a securities law, including the establishment of a securities and exchange commission; and to open and operate a stock exchange. Also included were proposals for the enactment of banking legislation to facilitate the establishment of the legal and regulatory oversight of commercial banks. All of these measures were designed to put in place a legal and regulatory framework intended to attract substantial private investment.

While these laws were enacted, a review has indicated that simply passing laws did not ensure the achievement of the desired objectives without an appropriate enforcement framework. In this case as in several others in the region and elsewhere, the Bank also provided financing through a technical assistance project to help the government

36. Structural Adjustment Credit I (Credit No. 28470 GE), 1996 and Structural Adjustment Credit II (Credit No. 29830 GE), 1997, available at <http://www.worldbank.org>.

implement the structural reforms covered in the program described in the letter of development. Financing was provided to tackle the issues related to the enforcement of these economic-related laws.

An important initiative associated with this component related to anti-corruption, which had become an issue of great interest to the Bank following the Bank President's offer at the Bank's Annual Meetings in 1995 to assist Member Countries to devise and implement appropriate anti-corruption strategies at a time when international attention to the effects of corruption on development had grown markedly. Additionally, through the above-mentioned credits and the Second Structural Adjustment Technical Assistance Credit, all to Georgia,³⁷ financing was provided to support a judicial reform and anti-corruption component designed to support an anti-corruption working group and to improve, *inter alia*, court administration and financial and management systems. Georgia was also equipped to publish its Official Gazette, containing its laws, decrees, presidential directives, and Supreme Court decisions. Equally as important, a comprehensive training program was carried out for judges in Georgia, utilizing the skills of Georgian judges who had been trained in the United States.

Apart from assistance provided through structural adjustment operations, the Bank financed technical assistance projects for economic and institutional reform in this Region, which included components in support of legal and judicial reform. These projects had the same purposes indicated above, namely to establish a legal, regulatory, and judicial framework which would foster the transformation of the economies towards a market economy. Good examples of this type of support include, the Tajikistan—Institutional Building Technical Assistance Project,³⁸ the Bulgaria—Technical Assistance for Economic Reform Project,³⁹ the Azerbaijan—Institutional Building Technical Assistance Project,⁴⁰ and a number of projects in Russia supporting this reform process, including the Legal Reform Project.⁴¹ These projects support, *inter alia*, the preparation of the legal and regulatory framework for privatization and private sector development; the reorganization and revision of the frameworks for banks; the revision of laws related to property rights such as land access rights and transferability of access rights; the development of the institutional and legal framework for the development of economic-related legislation, including those for commercial law and public procurement; the dissemination of laws and other legal information; and legal education, including public education campaigns and judicial reform in the form of training and development of alternative dispute resolution institutions. The Russian Project, a large-scale freestanding project, covered issues related to improving the performance of the overall Russian Legal system and is still being executed.

37. Second Structural Adjustment Technical Assistance Credit (Credit No. 29840 GE), 1997, available at <http://www.worldbank.org>.

38. Institution Building Technical Assistance Project (Credit No. 28610 TAJ), 1996, available at <http://www.worldbank.org>.

39. Technical Assistance for Economic Reform Project (Credit No. 3384 BUL), 1991, available at <http://www.worldbank.org>.

40. Institution Building Technical Assistance Project (Credit No. 2769 AZ), 1995, available at <http://www.worldbank.org>.

41. Legal Reform Project (Loan No. 4035 RU), 1996, available at <http://www.worldbank.org>.

The Tajikistan project, referred to earlier, enabled the government to establish the legal framework for its banking sector reform, and assisted in the development of laws and regulatory documents required for the privatization of state enterprises. In addition, laws affecting property rights were developed, including those relating to joint stock companies as well as bankruptcy. Lessons garnered from this Project included the fact that the association with the government's structural adjustment program gave the government an added incentive to implement the programs. Sustainability was considered as an issue; therefore, a second project was prepared to help deepen the institutional capacity of the entities responsible for implementing the respective programs.

3. *Latin America and the Caribbean*

Unlike the case of countries in the Africa Region, which had legal systems in disrepair, and those in Eastern and Central Europe, which needed the establishment of legal and institutional frameworks designed to support the shift to market-oriented economies, countries in Latin America had well developed systems. The legal and judicial infrastructure in some countries, however, needed modernization and overhauling. Others required the revision of legislation, although the legislative framework was largely appropriate. Much of the Bank's and other external assistance was, therefore, in support of judicial reform. The first freestanding judicial reform project financed by the Bank was in Venezuela in 1991, through the Judicial Infrastructure Project.⁴² The loan was intended to assist in the construction, rehabilitation, and upgrading of court buildings, as well as to support the training of judges and other judicial personnel. In addition, it was intended to provide technical assistance to strengthen the institutional capacities of the Judicial School. The project also included studies on subjects such as alternative dispute resolution mechanisms, computerized database on statutory and case law, and issues related to procedures in the courts. This project developed problems during its implementation due to the lack of participation of relevant stakeholders during the design phase. It also had a very heavy emphasis on infrastructure, which was heavily criticized both within and outside the Bank.

These deficiencies and other lessons of experience were utilized in Bank support for the Venezuela-Supreme Court Modernization Project in 1997,⁴³ a learning and innovation loan. The objectives of this Project were to assist the government in its objectives of achieving more transparent and predictable judicial decision-making, establishing more effective judicial processes and administration, providing greater opportunities for appropriate alternative providers of legal services, and enabling greater integrity and discipline within the judiciary. With the improvements of communications and dissemination of Supreme Court decisions, caseload administration, and overall improvement in administration and management, the Project has been rated highly successful by the project completion report. This high rating was also due in part to the participatory process which was implemented during all phases of the project. Judges of the Supreme Court, the main beneficiaries, were active in project design and implementation.

42. Judicial Infrastructure Project (Loan No. 3514 VE), 1993, available at <http://www.worldbank.org>.

43. Supreme Court Modernization Project (Loan No. 4270 VE), 1997, available at <http://www.worldbank.org>.

Bolivia has also received significant Bank support in legal and judicial reform, including support for the drafting of legislation for its capitalization program and its financial markets and pension reform through the Regulatory Reform and Capitalization Technical Assistance Project.⁴⁴ Significant assistance has also been provided in the drafting and implementation of its land law, including the implementation of a new land institute law, the drafting of a legal cadastre and registry law, and land tenure. The main lesson learned from this project was that major reform is possible if there is full commitment at both the technical and political levels of government. Equally important, interventions should be appropriately sequenced. Further, privatization should be preceded by the establishment of the legal and regulatory framework, and laws drafted and promulgated should be disseminated to all stakeholders, including the judiciary.

A comprehensive judicial reform operation was supported in the same country in 1995,⁴⁵ with components that ranged from judicial legal training and judicial process reforms designed to improve the quality and efficiency of civil dispute resolution, to development of judicial ethics standards and institutional framework and drafting of laws and regulations for the operation of its Constitutional Tribunal and the Judicial Council. This project was conceived partly in support of the financial sector reform and on the recognition that promulgation of legislation was simply not enough. Thus, strengthening the courts was viewed as complementary reform required to ensure the proper application of the laws included in the new framework. Noteworthy projects similar to those mentioned above are being financed in Argentina, Colombia, Ecuador and Guatemala, but most of these are still being implemented.

Another interesting project that offers lessons of experience is the aborted Peru—Judicial Reform Project.⁴⁶ The overall objective of the Project was to assist the justice sector agencies in Peru, including its courts, to enhance their efficiency and effectiveness. Specific components of the Project included modernizing the administrative structure and operation of the judiciary, strengthening processes for the selection, evaluating and removing judges, developing and strengthening alternative dispute resolution methods, and strengthening the capacity of civil society to analyze, monitor and demand appropriate levels of performance in the judiciary. The Project was prepared in 1996, during an emergency period in the country when there was political turmoil, and the supervision of the Judiciary had been transferred from an independent Commission of judges and legal practitioners, to an Executive Commission appointed by the government. It was also a period during which the Council of National Judges was prevented from appointing judges and had restricted disciplinary powers. Therefore, the Project was beset with controversy at its inception, and the tussle between the Executive Branch and the Judiciary in 1998 led to the government's request for the loan to be withdrawn. The Peruvian Government indicated its intention to pursue judicial reform using its own resources.

The key lessons from this Project illustrate some of the difficulties of implementing legal and judicial reform programs in politically-charged situations, as well as the care

44. Regulatory Reform and Capitalization Technical Assistance Project (Credit No. 264760 BOL), 1994, available at <http://www.worldbank.org>.

45. Judicial Reform Project (Credit No. 270500 BOL), 1995, available at <http://www.worldbank.org>.

46. Judicial Reform Project (Loan 4256 PE), 1997, available at <http://www.worldbank.org>.

that needs to be exercised by the Bank to ensure that it does find itself involved in areas prohibited under its Articles of Agreement as the former General Counsel warned in his Governance Memorandum. Experience under this Project indicated that solutions to the problems of the legal system were devised without great attention to the socio-political context, often a factor of great importance for the success of such programs but one which should be left entirely in the hands of the government or the program executing agencies concerned. While there were individuals and officials in the Peruvian Government who were committed to reform, these "pockets of commitment" were not enough if such champions were not located in the center of power in the government where they had political clout to act decisively.⁴⁷

4. *East Asia and the Pacific*

The Bank's first freestanding project in the law and justice sector was made to the People's Republic of China in 1994.⁴⁸ The Economic Law Reform Project, as it is known, was designed to assist in the improvement of the legal framework in support of economic reform, by strengthening training methods, curricula and opportunities for lawyers and law teachers, and by preparing specific laws on particular subjects, including enterprise reform, corporate restructuring, competition policy, tax, trade, procurement, and intellectual properties. Like the countries in Eastern and Central Europe, this project was intended to assist the government in adopting an appropriate legal reform program consistent with its goals for development and its interactions with the international business community. This ongoing project is expected to be completed in 2005.

Bank assistance in this region has been focused on other less developed countries such as Laos, where the Bank executed a UNDP-financed project designed to assist in the drafting of business legislation and regulations, the provision of training programs in business, economic financial and commercial law to Laotian lawyers, and the establishment of a Laotian official gazette, basic library, and information center. The Bank also provided a grant to Laos⁴⁹ to continue to support the improvement of its legal framework to support market-oriented economic growth, including the development of a medium-term national legal framework development plan to be implemented by the government.

The Bank also made a Credit to Mongolia⁵⁰ to assist in the drafting of economic, financial, and business law as well as training, including legislation covering debt recovery, consumer protection, and bills exchange. Assistance was also provided for the development of legislation for the introduction of new financial instruments and securities.

With respect to middle-income countries in the Asia Region, the Bank was active in supporting them during the so-called Asian Crisis, mainly in the economic reform area.

47. See *Building on Quick Sand: The Collapse of the World Bank's Judicial Reform Project in Peru*, A publication of the Lawyers Committee for Human Rights, (2000).

48. Economic Law Reform Project (Credit No. 2654 CHA), 1994, available at <http://www.worldbank.org>.

49. Technical Assistance Project (Grant No. 28697 LA, 1994, available at <http://www.worldbank.org>.

50. Technical Assistance Project (Credit No. 2321 MOG), 1991, available at <http://www.worldbank.org>.

However, in supporting Korea in 1998 in the restructuring of its financial and corporate sectors, the Bank provided financial support which gave the impetus for significant corporate legal reform. Areas of law reform included the legislation related to banking, monitoring of the corporate performance by boards of directors and shareholders, as well as enactment of revisions of its insolvency law. A bankruptcy court was established, and an interesting information program was developed and implemented to inform the general public about the reformed insolvency system.

Similar conditions in adjustment operations formed the basis for such corporate law reform in Thailand and Malaysia as well. In providing this assistance, the Bank collaborated with other institutions such as the International Monetary Fund. This intervention assisted the countries to stabilize their economies during the Crisis.

Grants have also been made to Indonesia and the Philippines. In Indonesia,⁵¹ the grant was used to prepare a strategy for: development of the legal profession, assessment of the functioning of the judicial system, and evaluation of the capabilities of legal institutions to adapt to changing economic conditions. In the Philippines,⁵² the grant assisted in the review of the adequacy of the legal framework to support private sector development and to devise appropriate legal arrangements and operating practice and procedures for managing state guarantees.

5. *Middle East and North Africa*

With its diverse group of countries with fairly long-standing legal traditions, the Bank's involvement in this Region has been mainly in support of law reform across the spectrum of sectors, including the environment, telecommunications, investment, and land tenure. These activities have been largely carried out in support of reform in the sector concerned. Thus, in the course of the preparation of the privatization of several enterprises in Morocco, the Bank made two loans⁵³ which included components for the development of the legal framework for enterprise privatization and foreign investment, as well as assistance in improving the efficiency of the judiciary.

A series of grants were made from 1994 onwards for activities in legal and judicial reform in West Bank Gaza under a trust fund administered by the Bank.⁵⁴ These operations were intended to support an area that had a unique mix of laws and legal structures left in place by centuries of occupation. Ottoman, British, Egyptian, Jordanian, and Israeli laws all apply to an extent. This state of affairs had obviously contributed to a poorly functioning legal and judicial system. The operations focused on providing assistance in the drafting of legislation in a number of areas, including the telecommunications and postal sector; supporting the Law Center of Bir Zeit University to collect and computerize the legislation in force in West Bank Gaza; and strengthening judicial

51. Judicial and Legal Reform (IDF Grant No. 28557), 1995, available at <http://www.worldbank.org>.

52. Private Sector Facilities Project (Japanese Grant No. TF 029227), 1995, available at <http://www.worldbank.org>.

53. Private Sector Development Project (Loans No. 4091 and 40911 MOR, 1994, available at <http://www.worldbank.org>).

54. Grant Agreement (Technical Assistance for West Bank and Gaza), 1994, Project Compilation of Legal Database (Project No. PS 1159), 1996, available at <http://www.worldbank.org>.

administration. These operations were preceded by activities under a broad technical assistance project which had the objective of developing an appropriate legal framework to support a market-oriented economy and private sector development. In particular, the component was designed to increase efficiency, predictability, and transparency of the judicial process; improve case management in the judiciary; and disseminate legislation and court decisions to the legal community and the public.

The main lessons learned from these operations were that a longer perspective is needed to see the results of legal reform, and legal and judicial reform in a post-conflict situation requires even more commitment from the authorities in the country concerned and must be aligned closely with other development-related activities to have a chance of making an impact. The events in West Bank Gaza in the interim have impeded the effective implementation of these programs.

6. *South Asia*

As in the case of East Asia and the Middle East, until recently, Bank assistance programs in legal and judicial reform have been mainly concentrated on operations which assist in the revision, amendment, and development of laws in sectoral areas such as foreign direct investment, corporate governance, and environment and power sectors. In the context of at least two adjustment operations,⁵⁵ Bangladesh has been supported in its efforts to establish special commercial courts in all its major economic centers in the enactment of a new companies law, as well as in the formulation of a program for business law reform, and strengthening of legislative drafting in its Ministry of Law and Justice.

In Pakistan, the Bank, in the context of a Financial Sector and Income Generation Project,⁵⁶ assisted in the preparation of a legal and judicial reform program to improve the environment for debt recovery, and to reorganize the respective authorities under its corporate law and revise its insurance law.⁵⁷

III. Reflections and Lessons of Experience

It is clear from the foregoing description and analysis of the results of some of the Bank-supported programs on legal and judicial reform that the Bank's interest and involvement in this important and rejuvenated field has been progressive as well as opportunistic. It has responded to the main challenges of the time (except during the 1960s and 1970s), and has adapted to the changing world order, while keeping its activities on the whole within its mandate as set out in the respective Articles of Agreement of IBRD and IDA. From my perspective, the Bank's role has been entirely appropriate, although there are many forthcoming challenges in the world which will again require

55. Financial Sector Adjustment Credit (Credit No. 2152, BD.), 1990.

56. Japanese Grant Agreement between Pakistan and International Bank for Reconstruction and Development dated September 24, 1993.

57. For a fairly comprehensive review of Bank-financed activities in legal and judicial reform, see also *INITIATIVES IN LEGAL AND JUDICIAL REFORM*, THE WORLD BANK, 2002 Ed., Mar. 2002.

the same amount of dexterity, professionalism, and intellectual leadership demonstrated in this context by its former General Counsel, Ibrahim. F. I. Shihata. What follows is an assessment of the experience garnered from the Bank's assistance programs to date with some reflections and concluding remarks on future directions.

It is somewhat surprising that the Bank was not involved in the first wave of legal and judicial reform in its developing Member Countries during the 1960s and 1970s, considering that the changes made to the legal systems were directly in support of the economic aspirations of these countries, an area of significant interest to the Bank. Looking at the facts retrospectively, there are probably good reasons for the Bank's inactivity in this area although it must also be acknowledged that the Bank lost a singularly important opportunity to make a big difference in the development of appropriate legal and judicial systems in its new Member Countries. The main explanation that may be advanced for this lack of action on the part of the Bank relates to the focus of the Bank, which was then described by the notable authors on the World Bank, Mason & Asher, as the "infrastructure and public utility Bank," or as a "supplier of capital."⁵⁸ This meant that it focused its assistance programs on the area of infrastructure, which was seen as the responsibility of governments during that period, as compared to the present emphasis on private sector led infrastructure development. As may be evident in many developing countries at the start of the twenty-first century, there are significant remnants of the heavy infrastructure built in developing countries during the 1960s, which was financed by the Bank. Also during the period in question, the Bank was staffed with significant professional experience in the infrastructure sector, but more importantly, requests for assistance from its borrowing countries may have been predicated on the fact that infrastructure was a *sine qua non* to facilitating significant economic development, and because of the expertise and comparative advantage it had demonstrated, as compared to other institutions. Even then, the Bank was heavily criticized for its concentration in the area of public utilities and infrastructure, in relation to the speed with which it dealt with agriculture and industrial financing, issues that were also considered important. It should be noted that the Bank's assistance in the development of appropriate legal frameworks for the implementation of infrastructure projects is not even comparable to what it supports today. Simply put, the Bank appears to have failed at the time to make the connection, which is now commonplace of the "quintessential role" that law plays and facilitates in the overall development process.

However, in my humble opinion, this progressive involvement seems to be appropriate because it took very much into account the constantly changing world scene. The Bank during this period, had neither the competence nor the analytical framework necessary to be involved in this difficult area of work. Helter-skelter involvement could have produced disastrous results, and could have been disruptive of programs in the Bank borrowing countries, especially since government commitment in this field was often lacking. More likely, the Bank would have been caught in the failures attributed to the law and development movement, as indicated in the article on "self-estrangement" by Professors Trubek and Galanter referred to earlier in this paper. The Bank would most

58. Edward. S. Mason and Robert E. Asher, *THE WORLD BANK SINCE BRETTON WOODS*, 7 BROOKINGS INST. (1973).

certainly have used the same scholars and legal practitioners who were described by Professor Merryman as being unfamiliar with the target culture and society, scholars devoid of a true and tested theory, artificially enjoying privileged access to power because of the presence of funding, and having immunity from the consequences of programs which, in any event, they did not have to live under.⁵⁹ The Bank, which had no coherent theory or program, particularly in this area of work, would in all likelihood have also failed the countries.

The birth of legal reform in the context of structural adjustment lending in the 1980s may, however, have been timely for several reasons. First, the economic downturn in the early 1980s and the need to design and implement policies needed to address systemic and institutional issues required significant changes in the legal framework. Second, structural adjustment lending was based on the notion that the balance of payment support would be forthcoming only when the borrower concerned had fulfilled the conditions included in its agreement with the Bank. One indicator of this was a demonstration of government commitment, and actions through the enactment of appropriate legislation was often the first step. Finally, there existed by that time more academic literature and analysis distilling the effects of different types of legal frameworks and their relative usefulness in advancing economic and financial objectives in developed countries. These lessons of experience provided an appropriate knowledge base, which served as an impetus for the legal reforms envisaged under the structural adjustment operations.

The Bank's involvement in this area since 1991, particularly after the seminal legal opinion of Ibrahim Shihata, and the foresight of the Bank's Executive Directors, has made a positive impact in several contexts, but not without difficulties. The lessons from the Bank assistance programs in this area were distilled by the Legal Department of the Bank in 1995 and 1997,⁶⁰ respectively. While this presentation takes those reviews into account, it relies also on reports prepared on a number of projects from the early 1990s, which have now been completed, and have been specifically evaluated by the Bank staff. The reflections in this presentation also rely on my personal experience in supervising the management of a number of projects in the Africa Region.

One of the most glaring observations often referred to in the literature on this topic, which has also been a major factor in Bank-supported projects, is that *legal and judicial reforms are long-term processes that require commitment from the government concerned and commitment at the highest levels*. This notion was also evident to the then General Counsel of the Bank when he wrote and spoke constantly about the "own felt needs" of Bank borrowers. The main approach used consistently in Bank-financed projects completed and reviewed to this point, is that the borrowing countries should have the space to engage their own relevant stakeholders in a participatory process and to gain their support before a project or program is prepared. Mechanisms that have been utilized include providing: funding for diagnostic studies to study the need for, and

59. Merryman, *Comparative Law and Social Change: On the Origins, Style, Decline and Revival of the Law and Development Movement*, 25 AM. J. COMP. L. 457, 481.

60. WORLD BANK POLICY RESEARCH WORKING PAPER, 1414, THE WORLD BANK AND LEGAL TECHNICAL ASSISTANCE, Initial Lessons, 1995; Vorkink, THE WORLD BANK AND LEGAL TECHNICAL ASSISTANCE, Current Issues, 1997.

nature of, legal and judicial reform, and carrying out workshops and seminars to develop programs that are appropriate for the country concerned with its citizens in the lead. These processes often involve foreign consultants, which is entirely appropriate, so long as they bring fresh ideas and lessons of experience into the process. This approach has been used very successfully in the projects financed in Georgia, Ghana, Guinea, and Tanzania, and is a worthwhile practice to be continued. The consultation and preparatory work undertaken under the Tanzania Financial and Legal Management Upgrading Project,⁶¹ is best practiced in this respect. Without commitment, programs will be unlikely to achieve their objectives; supply-oriented reform should be avoided.

Another issue that is closely related to the notion of commitment, is the requirement that those involved in legal and judicial reform programs must be acutely knowledgeable about the socio-political and cultural context in which the reforms are to take place. This need has been alluded to in the works of the law and development scholars. In this connection, unlike the legal reform activities in the 1960s which paid lip-service to this notion, the Bank has gone to great lengths through its dialogue with its borrowing countries, and in some cases, through covenants in its legal agreements with borrowers, to ensure that the persons carrying out such projects have the knowledge of the social norms, socio-economic, political, and cultural factors underpinning the legal traditions of the country concerned. A mechanism frequently utilized is to advise the country to carry out its analysis and programs in an interdisciplinary context with lawyers, as well as social scientists, and civil society. Also, the carrying out of research is considered appropriate in these circumstances.

In the quote from the first President of Ghana referred to in an earlier part of this presentation, he notes the value of outside help but indicates that "the basic principle—that all laws must be designed to meet the needs and aspirations of our people—is never forgotten."⁶² This sentiment was intended to indicate that all laws and new ideas brought into a country must take into account the socio-political and economic circumstances of the country. Reform of laws, which follow the old tendency of adopting wholesale the provisions of legislation or procedures from the so-called "advanced countries," whose economic and sociopolitical environment are vastly different from those of the developing countries, are bound not to achieve the desired objectives unless they are appropriately adjusted. There are examples of cases in Bank-financed projects where the old practice of copying law and processes have failed the reformers. For instance, the processes used and the content of some of the laws adopted under the harmonization of business laws in Francophone Africa involved this phenomenon, but work is underway to review and adjust them appropriately during the implementation phase. This unimaginative and often ineffective approach has been discerned in some projects in East and Central Europe. In a review undertaken by colleagues in the Bank of the major law reform exercises in the countries of Eastern and Central Europe, it was concluded that this phenomenon is alive and well. The review describes, *inter alia*, an example of the promulgation of the bankruptcy law of Albania, where the Bank, together with the aid agencies of Germany and the United States, provided financial assistance. In this case, not only were there conflicts in direction among the partners providing assistance, but

61. Ofosu-Amaah, *supra* note 33.

62. Gower, *supra* note 15.

conflicts arose involving the multiple legal traditions being employed in the course of drafting the law with no regard whatsoever for local circumstances. In the end, the law reflected a mixture of these legal traditions and was difficult to understand. Thus, even though the law was enacted as required, it has never been used. Albanian businesses and banks did not understand the law, or the concept of bankruptcy, which was not in their economic culture.

This phenomenon is also applicable to judicial reform projects. One writer who has reviewed projects financed by the Bank and other external financing agencies has referred to the substitution of legal traditions as applicable to judicial proceedings. He has noted that foreign assisted judicial reform in some Latin American countries has led many countries in the Region to jettison "the traditional inquisitorial traditions of the continental system in favor of an Anglo-American oral adversarial system for which no regional precedent, historical context, or experience exists," leading to very unsatisfactory results. As the author further continued,

[f]rom a legalistic point of view, this does not make sense. Strengthening traditional institutions would better serve the region than consigning judicial traditions to the trash heap. From an economic viewpoint, which is the view promoted by leading judicial reformers, judicial reform is the only way for Latin America to compete in the global market, and ensure that foreign investments and trade will be protected when legal disputes arise. It is alarming to think that judicial reform in Latin America is driven by money rather than by devotion to the rule of law.⁶³

Since this phenomenon of transplantation continues unabated, the Bank has to continue to be vigilant in its dialogues with borrowing countries to ensure that the socio-cultural, economic, and legal traditions of countries are taken significantly into account in programs financed by the Bank.

Another related issue is the role of foreign experts in the implementation of these programs. Such experts, while needed in the implementation of these programs, must work hand in hand with local experts. As one of the most distinguished Africa legal draftsmen has written in the context of the use of foreign experts in the drafting of legislation:

The other face of importing expertise lies in a full grasp of: (a) the corpus of the existing law, not forgetting the indigenous law; (b) thorough knowledge of the cultural, social, political and economic history of the country; and (c) a full grasp of the personal motives that lurk behind the intent of the sponsors in promoting a piece of legislation.⁶⁴

Countries should endeavor to use foreign experts in the manner suggested by Mr. Justice Crabbe, and the Bank should in its assistance programs insist on this most appropriate use of experts.

Another issue of importance is the content and nature of programs even when they have been developed in a participatory manner in the country concerned. The question which is raised is whether all programs should be comprehensive in the sense that

63. Luz E. Nagle, *Latin America in the Twenty-First Century: The Cinderella of Government: Judicial Reform in Latin America*, 30 CAL. W. INT' L L.J. 345, 358 (2000).

64. Crabbe, *Drafting in Developing Countries: The Problems of Improving Expertise*, 4 AFR. J. INT' L & COMP. L. 630, 646 (1992).

programs should include all inter-related activities. The sequencing of activities envisaged under a program is also an important consideration. Lessons gleaned from the reviewed projects indicate that programs should be carefully conceived and, where possible, appropriately sequenced to stand a chance of achieving the desired objectives. For instance, while the required financial assistance was provided for the revision of the business laws of the sixteen countries in the French and Spanish-speaking countries of Africa, the mere enactment of the laws a few years ago has not yielded the changes in the environment for efficiency in the business world in that part of Africa. The establishment of functioning registries to accept the registrations under the new company law have not been completed. Therefore, the business environment has been thrown into chaos, especially since the new law, which was adopted through a peculiar route not involving the Parliaments of these countries, is technically in place. Also, enactment of new laws without appropriate information delivery to lawyers, judges and the general public would make it difficult for them to be implemented. Thus, comprehensive programs, divided into interrelated parts and sequenced appropriately taking into account the financing available and the capacity of the country to implement the reforms, may offer the best chance for successful legal and judicial reform. In addition, account should be taken of the sustainability of reform programs which are implemented both in terms of governmental funding after the foreign assistance providers have left and appropriate monitoring evaluation to enable changes, as appropriate, to be made to ensure the achievement of program objectives.

Furthermore, experience in the last ten years has shown that the Bank has to take into account the difficult dilemmas that the borrowing countries are faced with when they have to borrow funds for legal and judicial reform programs. The lack of interest in this field has been partially due to the legitimate concern in developing countries to deal with what their authorities perceive as more pressing and worthwhile issues such as those in agriculture, health, education as well as issues in other social sectors. Up until the recent past, many Bank borrowers did not appreciate the need for legal and judicial reform even when there were calls for the improvement in the rule of law in countries. They viewed this sector as less important and less of a priority than other sectors. A familiar refrain was that citizens did not receive any real benefits from the legal system and improvements to it were not cost effective, especially since the courts have been marginalized, as there was no certainty that reformed courts would attract the citizenry back. To this end, budgetary provisions to that sector were often low in many countries and the legal and judicial establishments were considered the last entities to receive budgetary allocations as illustrated by the case of Tanzania. In view of the above, efforts are being made to secure funding to assist in the financing of legal and judicial reform related activities in borrowing countries. At the very least, the presence of grant funding would facilitate crucial diagnostic work and other studies which would indicate the needs of the sector as well as the impact reform may have on the development prospects of the country concerned. The Bank's recent decision to focus its Institutional Development Fund grants on fiduciary issues and on much needed legal and judicial reform means that interested countries would now have an opportunity to obtain grant funding for this most important aspect of the development process.

Even when countries decide to borrow, there is the perennial issue found in almost all areas in the development process relating to the sustainability of programs financed with external resources, including the maintenance of facilities and equipment provided

or acquired. This is a major problem in a number of programs financed by the Bank and other external financing agencies. This issue is also related to the issue of commitment to reform programs which has indicated the need to include the Finance Ministry or Treasury as one of the key stakeholders in the reform process. In this connection, the Bank requires countries at the end of the projects it finances to prepare a report on the "future operation" of the facilities financed, but this hardly deals effectively with the problem. Also, even though discussions on this issue normally continue during the course of the Bank's dialogue with its Member Countries following completion of a project, this remains an intractable problem.

As is evident from the above discussion, it is difficult to predict accurately the results of any legal and judicial reform program. The mere fact that laws are enacted will not mean that the laws will necessarily achieve their objectives. Also, the effects of improvements made in judicial processes or provision of infrastructure in the delivery of justice in the country concerned cannot be empirically ascertained. There are many variables which are determinants of how well a program will do. Therefore, one of the most urgent needs for work in this area is to develop appropriate systems and programs for the monitoring and evaluation of legal and judicial reform programs. Several institutions, including, the Bank, USAID and the Ford Foundation are conscious of this issue and are working on developing benchmarks and performance indicators, including outputs and outcomes, which can be used to evaluate ongoing and future programs. Without performance indicators prepared at the beginning of the program and utilized at its completion, it is impossible to judge whether the program has achieved its objectives. Therefore, the absence of appropriate performance indicators in most of the programs constitutes a major weakness in achieving development effectiveness. Much needs to be done in this area.

Finally, there is another perennial problem which is related to the coordination of foreign assistance. The experience in this area has simply not been very good or productive, except in a few cases. Typically, foreign donors and international institutions do not coordinate their activities and assistance to recipient countries. This was certainly the experience gleaned from the Bank on legal reform assistance programs immediately following the emergence of the new economies in Eastern and Central Europe following the dissolution of the Soviet Union. "Flag waving" was the order of the day, and evaluations since then and a review of completed projects have indicated in many instances significant overlapping and duplication of effort. This issue is a live one in many contexts. In this case, it would appear that the most promising solution is for the countries themselves to take control of coordinating the external financing agencies by developing the necessary institutional capacity to do so. The Bank is also working more closely with other entities having competence in this area and has forged better relationships with the regional international financing agencies, bilateral agencies, and with institutions such as the Commonwealth Secretariat and the international bar and other associations. A good example of this, in the context of legal reform, is the very collaborative engagement of several agencies in a program supporting environmental law and institutions reform in Africa. This program is executed by the United Nations Environment Programme in collaboration with the United Nations Development Programme, the Food and Agriculture Organization of the United Nations, the Bank and International Union for Conservation of Nature. The laws prepared are reviewed by the agencies, and all of the comments are presented to the experts of the country concerned, who make the final decisions.

IV. Conclusion

Legal and judicial reform in developing countries is a challenging area of work compared to some other areas in the development process, such as infrastructure development. It is more complicated than building a road from one part of a country to another. However, in my humble opinion, the World Bank's progressive involvement in this area of work has been entirely appropriate and supportive of countries which have been keenly interested in establishing legal and judicial systems that facilitate equitable development. While the Bank's approach for this area of work has so far been opportunistic, time has probably come for a more proactive strategy stemming from the significantly increased interest shown by many developing countries. In this connection, the Bank is fortunate to have a new General Counsel, Ko-Yung Tung, under whose stewardship, the Legal Vice Presidency, has implemented several initiatives to expand and deepen the Bank's work in legal and judicial reform. In the last two years, Global Conferences on law and justice systems have been held in Saint Petersburg with participants from all over the world to discuss and share experience on programs in this area. Regional Conferences have been held in the Middle East and North Africa, the Latin America and the Europe and Central Asia Regions. A major pan-African Conference on legal and judicial reforms co-sponsored by the Bank is planned for February 2003. The Bank's Legal Vice Presidency, which is the Unit in the Bank largely engaged in legal and judicial reform, has substantially increased its staff working in this area and has reconstituted a special practice group on legal and judicial reform. A program of action which includes a series of legal and judicial sector assessments, dialogue with potential recipient countries on Bank assistance, developing tool kits, and developing and sharing knowledge products is being implemented. All of these actions should lead to better and more successful projects in the borrowing countries of the Bank, so long as they fully take into account the lessons gleaned from completed and ongoing Bank-financed projects, as well as those supported by other agencies.

In particular, the assistance programs that the Bank finances should lead to the development and enactment of laws which are appropriate to the socio-political and economic situations of the countries. Experts and professionals in the countries should continue to play a major role more than before, and they should take full advantage of the existence of very successful programs which offer good practices in this difficult area of work. Legal reform activities should lead to the promulgation of laws which are consistent with developmental objectives of the country concerned and be fully implementable.

With respect to judicial reform programs, it is hoped that after assistance is provided, the judicial systems concerned would have characteristics which would assist in the better administration of justice. The Woolf Report on Access to Justice in the United Kingdom contains neutral principles which appear to include all the desired characteristics for a judicial system. The systems reformed should:

- (1) be just in the results they deliver;
 - (2) be fair in the way they treat litigants;
 - (3) offer appropriate procedures at a reasonable cost to all;
 - (4) deal with cases with reasonable speed;
 - (5) be understandable to those who use it;
 - (6) be responsible to the needs of those who use it;
-

- (7) provide as much certainty as the nature of particular cases allow; and be effective: adequately resourced and organized.⁶⁵

Finally, the role of Ibrahim Shihata in forging the way for the Bank to engage steadily in this important area of work is highly appreciated. His foresight, his clarity of thought and vision, coupled with the importance of working strictly within the mandate of the World Bank, has been appreciated by all. We hope that the vision of having functioning and efficient legal and judicial systems in developing countries that he so cherished—will be achieved in the not-too distant future and that the World Bank will continue to play a useful role and effective in this process.

65. Lord Woolf, *Access to Justice* (Final Report to the Lord Chancellor on the civil justice system in England and Wales, July 1996).
